IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6994 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T.C. - Petitioner(s)

Versus

MOHMED HARISH GYASUDDIN MALEK LEGAL HEIR OF GYASUDDIN MALEK - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

MR GK RATHOD for Respondent No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/08/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner Gujarat State

Road Transport Corporation has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Nadiad dated 8.11.2004 passed in Reference (ITN) No.60/1999 in partly allowing the same directing the respondent to give him appointment in Class-IV on compassionate ground.

2.The father of the respondent, G.S.Malek was serving as a Driver and it appears from the record that he was dismissed from service by the petitioner/corporation w.e.f. 15.5.1993 and the same came to be challenged by the said workman by way of Reference No.122/1995. It appears from the record that there was a settlement entered into between the workman and the petitioner on 26.2.1997 by which it was agreed that the petitioner shall reinstate the said workman within a period of 3 months and by virtue of the aforesaid settlement, the said workman was denied the backwages and/or any other monetary benefits and substituted punishment was imposed of stoppage of 2 increments with permanent future effect. It so happened that the said workman was not called for duty on or before 26.7.1997, however, vide communication dated 5.9.1997, he was directed to remain present at Petlad however, the said workman was suffering from Paralysis and Cancer, his wife informed

the corporation that he is not in a position to report for duty and, unfortunately, the workman died due to Paralysis and Cancer on 19.10.1997. It appears from the record that as per the policy and settlement, the heir of the deceased workman was entitled to the appointment on compassionate ground and therefore, an application was given by the respondent on 8.11.1997 to give him appointment in Class-IV as per his qualifications on compassionate ground. The said application came to be dismissed on the ground that as per the settlement entered into between the petitioner/corporation and the deceased workman in Reference No.122/1995, there was no automatic reinstatement but it was subject to the base license and physical fitness of the workman and as the deceased workman did not report for duty and was not in a position to report for duty due to sickness of Paralysis and Cancer, he was not physically fit and therefore, he cannot be said to be in service at the time of his death and therefore, the respondent is not entitled to the appointment on compassionate ground on the death of the deceased workman as he was not on duty. The respondent raised industrial dispute by way of Reference (ITN) No.60/1999 for getting the appointment as a Peon on compassionate ground as heir of deceased workman, which was referred to Industrial

Tribunal, Nadiad for its adjudication. The Industrial Tribunal, Nadiad considering the settlement entered into between the petitioner/corporation and deceased workman in Reference No.122/1995 and the condition that the deceased workman was to be reinstated within a period of 3 months from 26.4.1997 and considering the fact that as he was not reinstated within a period of 3 months on or before 26.7.1997 and considering the fact that had the workman reinstated on or before 26.7.1997, in that case, he could have reported for duty. However, unfortunately, subsequently due to the fact that deceased workman was suffering from Paralysis and Cancer, he could not report for duty as per the communication dated 5.9.1997 and considering the fact that the respondent has submitted an application within a period of 1 month from the date of death of the deceased workman for compassionate appointment, the Industrial Tribunal directed the petitioner to give appointment to the respondent in Class-IV as per his qualifications on compassionate ground. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Nadiad dated 8.11.2004 passed in Reference (ITN) No.60/1999, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3.Shri Hardik C. Rawal, learned advocate appearing on behalf of the petitioner has vehemently submitted that pursuant to the settlement entered into between the petitioner/corporation and the deceased workman in Reference No.122/1995, there was no automatic reinstatement but it was a conditional one subject to having the base license and the physical fitness and therefore, when admittedly the deceased workman was not physically fit as he was suffering from Paralysis and Cancer, he was not required to be reinstated and therefore, he cannot be said to be in service at the time of his death and therefore, the respondent was not entitled to the appointment on compassionate ground on the death of the deceased workman, who was not in service, the Industrial Tribunal has materially erred in directing the petitioner to reinstate the respondent on compassionate ground. He has also further submitted that even otherwise, the Industrial Tribunal could not have directed the petitioner to straight away appoint the respondent on compassionate ground and at the most the Industrial Tribunal could have directed the petitioner to consider the case of the respondent for appointment on compassionate ground as per the policy, settlement and circulars and therefore, it is requested

to allow the present Special Civil Application.

4. Shri M.H.Rathod, learned advocate appearing on behalf of the respondent while opposing the present Special Civil Application has submitted that in the peculiar facts and circumstances of the case, the Industrial Tribunal was justified in directing the petitioner to appoint the respondent on compassionate ground, more particularly, considering the settlement entered into between the petitioner/corporation and the deceased workman in Reference No.122/1995 and considering the fact that if the deceased workman could have been directed to report for duty within a period of 3 months as per the settlement and would have been reinstated, he might have resumed the duty but unfortunately, the deceased workman died due to Paralysis and Cancer and therefore, the judgment and award passed by the Industrial Tribunal is just and proper, which is not required to be interfered with by this Court in exercising powers under Articles 226 and 227 of the Constitution of India.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that there was a settlement entered into between the petitioner/corporation and deceased workman dated 26.4.1997 in Reference No.122/1995 and as per the said settlement, the deceased workman was to be reinstated within a period of 3 months, however, the deceased workman was not reinstated within 3 months and for the first time while communication dated 5.9.1997, the respondent workman was directed to remain present at Petlad, however, unfortunately, the deceased workman could not report for duty due to his sick-ness of Paralysis and Cancer and, ultimately, he died on 19.10.1997 and immediately within a period of approximately one month, the respondent as heir of the deceased workman applied for appointment on compassionate ground. It is not in dispute that the heirs of deceased workmen who are in service are entitled to appointment on compassionate ground as per the policy and circulars of the corporation. The contention on behalf of the petitioner that the aforesaid settlement dated 26.4.1997 in Reference No.122/1995 was conditional one and subject to physical fitness of the workman. However, considering the settlement as a whole, the same cannot be accepted as in para-2 of the said settlement it was agreed that the workman will be reinstated within 3

months and that as per the condition Nos.3 and 4 there was denial of backwages and other monetary benefits and that a further punishment of stoppage of 2 increments with permanent future effect was imposed and it also appears that the aforesaid settlement is a cyclostyle one. As rightly held by the Industrial Tribunal if deceased workman would have been reinstated within a period of 3 months, he might have reported for duty but he was not reinstated within a period of 3 months and when he was to be reinstated, he could not report for duty due to sickness of Paralysis and Cancer and ultimately, within a period of one-and-a-half month he died unfortunately. In view of the above facts and circumstances of the case and the settlement entered into between the petitioner/ corporation and deceased workman, it cannot be said that the deceased workman was not in service at the time of his death. Under the circumstances, the respondent as heir of deceased workman was required to be considered for appointment on compassionate ground as per his qualifications and on the basis of the scheme and the circulars of the corporation. However, Shri Rawal is right in his submission that the Tribunal ought not to have directed the petitioner to appoint the respondent on

compassionate ground straight away and at the most the Tribunal could have directed the petitioner to consider the case of the respondent for an appointment on compassionate ground as per the scheme and circulars. Under the circumstances, the judgment and award passed by the Industrial Tribunal is modified to the aforesaid extent and the petitioner is required to be directed to consider the case of the respondent workman for appointment on compassionate ground as per his qualifications and as per the scheme, circulars and policy of the corporation with regard to the appointment on compassionate ground.

7. For the reasons stated above, the petition succeeds and the judgment and award passed by the Industrial Tribunal, Nadiad dated 8.11.2004 passed in Reference (ITN) No.60/1999 is modified to the extent that the petitioner is directed to consider the case of the respondent as heir of the deceased workman for appointment on compassionate ground as per the scheme, circulars and policy of the corporation with regard to appointment on compassionate ground as per his qualifications. Such exercise to be done by the petitioner/corporation within a period of 3 months from

the date of receipt of this order.

8.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.